IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 412/2004

Shri Gurudas Sanvlo Salgaonkar,
aged 49 years, resident of Bella Vesta,
Sangolda, Bardez, Goa. ..... Petitioner.

V/s.

1. Filipe Arcanjo Presentacao
Mesquita alias Arcanjo Mesquita,

2. Mrs. Carlota Mesquita
Both now deceased, through their
legal heirs.

(a) Rev. Fr. John Mesquita

(b) Rev. Bro. Romualdo Mesquita,

(c) Mr. William Mesquita,

(d) Mrs. Monica Mesquita

residents of Bombay, represented by
their constituted attorney
Mrs. Especiosa E. Almeida,
Resident of Vaddem, Socorro, Bardez, Goa. ..... Respondents.

Mr. J.P. Mulgaonkar, Advocate for the Petitioner.

Mr. V. Menezes, Advocate for the respondents.

CORAM : B.H. MARLAPALLE, J.

DATE : SEPTEMBER 17, 2004.

P.C. :

Heard Mr. Mulgaonkar, the learned Counsel for the petitioner and

Mr. Menezes, the learned Counsel for the respondents. The petitioner has filed an application at Exhibit-8 on or about 17.1.2004 in Execution Application No.21/1996 and the said application came to be dismissed by the learned Civil Judge, Sr. Division, at Mapusa on 20.7.2004 and hence, this petition under Article 227 of the Constitution.

2. The present respondents had initiated execution proceedings against the petitioner's brother Naguesh Salgaonkar, for executing the decree for eviction passed in Regular Civil Suit No. 58/1995. The said suit was decreed on or about 20.1.1996. The Decree-holders, therefore, filed Execution Application No.21/96 and in the same, the present petitioner, for the first time moved an application under Order 21, Rule 97 of C.P.C. on 30.4.1998 at Exhibit M-6. While this application was pending, the petitioner moved yet another application at Exhibit M-14 contending therein that he is in possession of the suit house as *mundkar* and he had already filed an application for registration of mundkar under Section 29(4) of the Mundkar Act in the year 1996. By his own choice, the petitioner applied to withdraw the application at Exhibit M-6 and, therefore, the same was dismissed as withdrawn by order dated 27.9.2001. The application at Exhibit M-14 was decided on merits by the learned Civil Judge, Sr. Division, at Mapusa and by order dated 12.10.2001 it was dismissed. The petitioner challenged the said order by way of Regular Civil Appeal No. 140/2001, which was also dismissed by the learned Addl. District Judge, at Panaji by Order dated

25.9.2001. The petitioner then approached this Court in Second Appeal No. 13/2003 which was also dismissed in limine by Order dated 21.8.2003, on the ground that there was no substantial question of law involved in the second appeal.

3. On or about 14.01.2004, the petitioner moved an application under the Mundkar Act before the Court of Mamlatdar and by an ex parte temporary injunction dated 16.1.2004, the Decree holders were directed not to cause any interference in the possession. However, this application was dismissed by the Joint Mamlatdar on 25.2.2004. It appears that the petitioner has, thereafter, approached the Dy. Collector by way of an appeal and though initially an ex parte order was passed upto 17.8.2004, it came to be extended and the next hearing is posted on 5.10.2004.

4. In the meanwhile, the Executing Court issued a warrant to put the Decree-holders in possession of the suit property and the application at Exhibit-8 was filed to recall this warrant.

5. There is no dispute that the status of the original Judgment-debtor i.e. Naguesh Salgaonkar, the brother of the present petitioner, has already been decided as a *mundkar* and the same has been turned down by the Judgment dated Order 21.2.1986 . This order has been confirmed in revision application by the Administrative Tribunal on 31.10.1990.

The petitioner took out another armoury from his pocket and claimed an independent status as a mundkar. It would be interesting to reproduce the following observations made by the lower appellate Court while dismissing the Regular Civil Appeal No.140/2001 :

> "... It appears that the appellant is himself not are of his status and these inconsistent claims raised by the apellant only suggest that these applications are filed with the sole object of depriving the decree-holder from enjoying the fruits of the decree which was obtained after 20 years of the litigation.
>
> It is also to be noted that the defendant Shri Nagesh Salgaonkar had stated that he was residing in the suit house with his family members since the year 1960 as mundkar thereof. This claim is already negated by the competent authority and the trial Court had held that the agreement dated 27.11.1972, by which Nagesh Salgaonkar was inducted in the suit house, shows that he was only a caretaker of the suit house. It is not the case of the appellant that he is having any independent rights in the suit house. It is also to be noted that neither in the application at Exhibit M-14 nor in the application for registration, the copy of which is on the record, the appellant had specified since when he is residing in the suit house."

6. The claim made by the petitioner in the application at Exhibit -8 has rightly been turned down by the Court below and, therefore, the challenge to the impugned order is devoid of any merit. The petition is rejected summarily.

B.H. MARLAPALLE, J.

ssm.